

As many commenters suggest, much of the punchlist can be resolved by defining this term.⁴⁶ For example, DOJ believes that an accessing carrier has an obligation to deliver post-cut-through dialing information for 800 long-distance calls, even though no technology exists for the accessing carrier to differentiate such numbers from prohibited call content or numbers used to signal customer premises equipment. DOJ and the FBI "endorse the development of such capability."⁴⁷

Even if CALEA required such information to be provided -- which it does not -- it would not be reasonably available to the carrier. Such information has no business purpose for the accessing carrier, and the carrier does not collect it today. It would only be available if the carrier accessed the call content channel once the communication was cut-through. That is, on a pen register order, carriers would be required to dabble in a call's content to provide the requested

⁴⁶ See, e.g., Ameritech's Comments on the Petitions for Rulemaking to Establish Technical Requirements and Standards for CALEA, CC Docket No. 97-213, filed May 20, 1998, at 6; Comments of the Center for Democracy and Technology, CC Docket No. 97-213, filed May 20, 1998, at 28; Comments of the United States Telephone Association, CC Docket No. 97-213, filed May 20, 1998, at 3.

⁴⁷ DOJ Capability Comments at 11, n. 2.

information -- something not authorized by CALEA. Further, a carrier would be put in the position of then deciding which signals are being used by a subsequent carrier to route a call, something that no one has proposed is technically possible or desirable. The information simply is not reasonably available.

When DOJ tells the Commission it endorses the development of a capability to parse the post-cut-through information, it oversteps its bounds. The government must use available technology to preclude access to such information on pen register orders.⁴⁸ Moreover, the burden of acquiring and paying for such technology is on the government, not the carrier, under CALEA.

In addition to the above, CALEA requires carriers to protect the privacy of communications not authorized to be intercepted.⁴⁹ CALEA also expressly excludes post-cut-through dialing or signaling from the definition of call-identifying

⁴⁸ See CALEA Section 207(c), codified at 18 U.S.C. § 3121(c).

⁴⁹ 47 U.S.C. § 1002(b)(3).

information.⁵⁰ If it is not call-identifying information, a carrier has no choice but to treat it as content. As noted above, there is no technology a carrier can employ today to access post-cut-through dialing or signaling information simply because the accessing carrier does not know whether such dialing or signaling is content or routes a call through another carrier's network.

V. INFORMATION SERVICES ARE EXCLUDED.

AT&T Corp. ("AT&T") has noted an important errata to the industry standard in regard to information services.⁵¹ Specifically, AT&T raised concerns about references in JSTD-025 to Cellular Digital Packet Data ("CDPD") services when such services are not covered by CALEA.

CTIA supports the exclusion of wireless data services such as CDPD from the industry standard. CDPD is not a

⁵⁰ See House Report at 3501 ("Other dialing tones that may be generated by the sender that are used to signal customer premises equipment of the recipient are not to be treated as call-identifying information.").

⁵¹ *Comments of AT&T Corp. Regarding Scope of CALEA Capabilities*, CC Docket No. 97-213, filed May 20, 1998, at 17-22. See *In the Matter of Communications Assistance for Law Enforcement Act*, Notice of Proposed Rulemaking, CC Docket 97-213, FCC 97-356 (released October 10, 1997).

commercial mobile service as defined by Section 332(d) of the Communications Act of 1934. As AT&T correctly notes, to be defined as a commercial mobile service and fall within the scope of CALEA, a mobile service must make interconnected service available.⁵² CDPD is not interconnected with the public switched network.

AT&T also notes that CDPD qualifies as an information service that is otherwise exempt under CALEA, citing the

⁵² Section 332(d) of the Communications Act defines mobile service as follows:

(d) Definitions. For purposes of this section
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(1) the term "commercial mobile service" means any mobile service" (as defined in Section 3 [47 U.S.C. § 153]) that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by the Commission;

(2) the term "interconnected service" means service that is interconnected with the public switched network (as such terms are defined by regulation of the Commission) or service for which a request for interconnection is pending pursuant to (c) (1) (B); and

(3) the term "private mobile service" means any mobile service (as defined in Section 3 [47 U.S.C. § 153]) that is not a commercial mobile service or the functional equivalent of a commercial mobile service, as specified by regulation by the Commission.

recent Commission Report to Congress on Universal Service.⁵³ The Commission concluded in its Universal Service Report that Internet access services were appropriately classified as "information services" not subject to regulation under the Communications Act because Internet access services combine computer processing, information provision, and other computer-mediated offerings with data transport.⁵⁴

This is true despite the fact that an Internet access service might also provide some basic telecommunications transmission service in conjunction with its Internet access service.⁵⁵ Under the Commission's current approach, mixed or hybrid services do not lose their classification as information services because the transport component is inseparable from the primary information service being provided.⁵⁶

⁵³ *Report to Congress*, CC Docket No. 96-45, FCC 98-67 paras. 33, 39 (released Apr. 10, 1998).

⁵⁴ *Id.* at para. 73.

⁵⁵ *Id.* at para 56-57, 76.

⁵⁶ *Id.* at para. 56.

CDPD currently provides an Internet access service and it will become a significant wireless solution, both fixed and mobile, to providing Internet access in the future. CDPD service is not distinguishable from traditional Internet access service and therefore qualifies as an information service exempt from CALEA's capability requirements. CTIA supports AT&T's request for an errata to the industry standard.

VI. CONCLUSION

The Commission should start its inquiry by reviewing the industry standard. CTIA continues to urge the Commission to reject the punchlist capabilities demanded by DOJ and to acknowledge the industry standard as a safe harbor for carriers. Should the Commission require any modifications to the standard, those changes should be accomplished through TIA's TR-45.2 Subcommittee. Also, the Commission needs to develop a record to that will demonstrate that any proposed rule is the most cost-efficient method of implementing the assistance capability requirements of CALEA. This includes a full inquiry into the viability of any network-based solution. Finally, CTIA supports AT&T's request for an errata to the industry standard with respect to CDPD and similar data services.

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